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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

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7 CHRISTIANA TRUST,

8 Plaintiff,

9 v.

10 SFR INVESTMENTS POOL 1, LLC
11 CORNERSTONE HOMEOWNERS
12 ASSOCIATION
13 TERRA WEST COLLECTIONS GROUP *dba*
14 Asset Management Services,

15 Defendants.

Case No. 2:15-cv-01149-RFB-NJK

ORDER

16 SFR INVESTMENTS POOL 1, LLC,

17 Counter Claimant,

18 v.

19 CHRISTIANA TRUST,

20 Counter Defendant.

21 **I. INTRODUCTION**

22 Before the Court are Plaintiff Christiana Trust's ("Christiana Trust") Motion for Summary
23 Judgment, Defendant Cornerstone Homeowners Associations' Motion for Summary Judgment,
24 and Defendant Terra West Collections' Motion for Judgment on the Pleadings. ECF Nos. 118,
25 119, 120. For the following reasons, the Court grants all the motions.

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1 **II. PROCEDURAL BACKGROUND**

2 Christiana Trust sued Defendants on June 17, 2015, seeking declaratory relief and quiet
3 title that a nonjudicial foreclosure sale conducted in 2013 pursuant to NRS Chapter 116 on a Las
4 Vegas property did not extinguish a deed of trust attached to the property. ECF No. 1. Christiana
5 Trust filed the operative second amended complaint on April 18, 2016. ECF No. 48. Defendant
6 SFR Investments Pool 1, LLC (“SFR”) answered on May 3, 2016. ECF No. 52. Cornerstone
7 answered on June 17, 2016. ECF No. 61. Cornerstone also filed a jury demand on June 17, 2016.
8 ECF No. 63. Defendant Terra West answered on June 17, 2016. ECF No. 48. On October 13, 2016,
9 the Court stayed the case pending the issuance of the mandate in Bourne Valley Court Trust v.
10 Wells Fargo Bank, N.A. ECF No. 78. The Court denied all pending motions without prejudice
11 with leave to refile when the stay is lifted on October 14, 2016. ECF No. 79. On April 4, 2019, the
12 Court lifted the stay. ECF no. 108. Christiana Trust and Cornerstone both moved for summary
13 judgment on July 1, 2019, while Terra West moved for judgment on the pleadings. ECF Nos. 118,
14 119, 120. A hearing on the pending motions was held on October 1, 2019, and this written order
15 now follows.

16 **III. FACTUAL BACKGROUND**

17 The Court makes the following findings of undisputed and disputed facts:

18 **a. Undisputed Facts**

19 On or around August 2007, Erik Bryant purchased real property located at 10576
20 Danielson Avenue, Las Vegas, Nevada 89129 (the “property”). The property is subject to the
21 covenants, conditions and restrictions (CC&Rs) of the Cornerstone Homeowners Association
22 (“Cornerstone”), which requires property owners to pay monthly assessments. Bryant financed
23 his purchase with a \$312,000 loan from Countrywide Bank, FSB, secured by a deed of trust
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1 naming MERS as the nominee-beneficiary. As evidenced by a deed of trust recorded on June 20,
2 2011, all beneficial interest in the deed of trust was assigned from MERS to BAC Home Loans
3 Servicing, LP fka Countrywide Home Loans Servicing (“BAC”). Bryant fell behind on monthly
4 assessments. A notice of claim of delinquent assessment lien was recorded against the property
5 by Defendant Assessment Management Services (“AMS”) as HOA trustee on behalf of the HOA
6 on September 23, 2011, stating an amount due of \$2,204. On April 3, 2012, a notice of default
7 and election to sell was recorded against the property stating an amount owed of \$3,427.62. In
8 response, on May 7, 2012, an employee of the law firm Miles Bauer LLP, on behalf of deed of
9 trust beneficiary Bank of America (BANA), as successor by merger to BAC, requested
10 payoff/HOA assessment information for the superpriority portion of the lien.
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13 On May 10, 2012, AMS sent Miles Bauer an account statement dated through May 10,
14 2012, showing a total amount owed of \$3,731.89. The account statement reflected that monthly
15 assessments of \$49.45 were charged in 2011, when the notice of delinquent assessment lien was
16 recorded. Nine months of assessments in 2011 was \$445.05. The account statement did not list
17 any maintenance or nuisance and abatement charges. AMS’s corporate witness has testified that
18 its policy at the time was to respond to a request to pay off the superpriority portion with a
19 demand for payment in full. On May 24, 2012, Miles Bauer sent a letter to AMS with a check for
20 \$506.25, which represented more than the superpriority portion of the lien. AMS returned the
21 check for \$506.25. At that time, AMS had a policy of rejecting such a “partial payment,” i.e., a
22 payment that was not for the full lien amount. AMS also had a policy that unless a lender with a
23 senior deed of trust tendered full payment of the entire lien amount, AMS would continue with
24 collections, proceed to sale, and eliminate the deed of trust. On July 11, 2013, a notice of
25 foreclosure sale was recorded against the property by AMS on behalf of the HOA. On August
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1 21, 2013, a trustee’s deed upon sale was recorded indicating that SFR had purchased the property
2 for \$18,000 on August 6, 2013. All beneficial interest in the deed of trust was assigned to
3 Christiana Trust as evidenced by an assignment of deed of trust recorded on April 4, 2014.
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5 **b. Disputed Facts**

6 The Court finds there to be no material disputed facts.

7 **IV. LEGAL STANDARD**

8 **a. Summary Judgment**

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10 Summary judgment is appropriate when the pleadings, depositions, answers to
11 interrogatories, and admissions on file, together with the affidavits, if any, show “that there is no
12 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of
13 law.” Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). When
14 considering the propriety of summary judgment, the court views all facts and draws all
15 inferences in the light most favorable to the nonmoving party. Gonzalez v. City of Anaheim,
16 747 F.3d 789, 793 (9th Cir. 2014). If the movant has carried its burden, the nonmoving party
17 “must do more than simply show that there is some metaphysical doubt as to the material facts
18 Where the record taken as a whole could not lead a rational trier of fact to find for the
19 nonmoving party, there is no genuine issue for trial.” Scott v. Harris, 550 U.S. 372, 380 (2007)
20 (alteration in original) (internal quotation marks omitted). It is improper for the Court to resolve
21 genuine factual disputes or make credibility determinations at the summary judgment stage.
22 Zetwick v. Cty. of Yolo, 850 F.3d 436, 441 (9th Cir. 2017) (citations omitted).
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25 **b. Judgment on the Pleadings**

26 Federal Rule of Civil Procedure 12(c) provides: “Motion for Judgment on the Pleadings.
27 After the pleadings are closed—but early enough not to delay trial—a party may move for
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1 judgment on the pleadings.” This Circuit has held that “a Rule 12(c) motion is ‘functionally
2 identical’ to a Rule 12(b)(6) motion A judgment on the pleadings is properly granted when,
3 ‘taking all the allegations in the pleadings as true, the moving party is entitled to judgment as a
4 matter of law.’” Gregg v. Dep’t of Pub. Safety, 870 F.3d 883, 887 (9th Cir. 2017) (citations
5 omitted). In reviewing a grant of a Rule 12(c) motion, the Ninth Circuit “inquires whether the
6 complaint at issue contains ‘sufficient factual matter, accepted as true, to state a claim of relief that
7 is plausible on its face.’” Harris v. Cty. of Orange, 682 F.3d 1126, 1131 (9th Cir. 2012) (citing
8 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). “The Court may find a claim plausible when a
9 plaintiff pleads sufficient facts to allow the Court to draw a reasonable inference of misconduct,
10 but the Court is not required ‘to accept as true a legal conclusion couched as a factual allegation.’”
11 Id. (citing Iqbal, 556 U.S. at 678).

14 **V. DISCUSSION**

15 The Court finds that Christiana’s predecessor-in-interest Bank of America attempted tender
16 in this case, extinguishing the superpriority lien, and thus incorporates by reference and applies
17 the Nevada Supreme Court’s reasoning in Bank of Am., N.A. v. SFR Investments Pool 1, LLC,
18 427 P.3d 113, 116 (Nev. 2018) (en banc), and this own Court’s reasoning in Carrington Mortgage
19 Servs., LLC v. Tapestry at Town Ctr. Homeowners Association, 381 F. Supp. 3d 1289, 1298–1299
20 (D. Nev. 2019).

23 BANA sent through Miles Bauer a May 7, 2012 letter offering to pay the superpriority
24 amount. The HOA’s agent, AMS, sent a statement of account and demanded payment of the entire
25 amount due. Miles Bauer sent a May 2, 2012 letter enclosing a \$506.25 check in a good faith effort
26 to tender the nine-month superpriority lien amount. This check represented an amount in excess
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1 of the superpriority portion of the lien on the property. This check was rejected and returned. This
2 evidence leaves no genuine dispute as to tender.

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4 SFR's objections to the evidence raise no more than metaphysical doubt as to whether or
5 not attempted tender occurred. SFR's specific arguments about the admissibility of the Miles
6 Bauer affidavit and impermissible conditions in the letter accompanying the check have been
7 previously addressed and rejected by this Court in Carrington, 381 F. Supp. 3d at 1298, and more
8 recently in Bank of New York Mellon v. Willow Creek Community Association, No. 2:16-cv-
9 00717-RFB-BNW, 2019 WL4677009, at *4– 5 (D. Nev. Sept. 25, 2019) .

11 Although the Court finds that Christiana Trust prevails on its quiet title claim, the Court
12 rejects the remainder of Christiana Trust's arguments. The Ninth Circuit has confirmed that NRS
13 Chapter 116 is not facially unconstitutional because of its opt-in notice requirement in Bank of
14 America, N.A. v. Arlington West Twilight Homeowners Association, 920 F.3d 620, 624 (9th Cir.
15 2019). The Court also dismisses the negligence, negligence per se, misrepresentation, breach of
16 contract, unjust enrichment, tortious interference with contract and breach of implied covenant of
17 good faith and fair dealing claims, incorporating by reference its reasoning in Deutsche Bank v.
18 Edward Kielty Trust, No. 2:17-cv-01759-RFB-PAL, 2019 WL 1442183 at * 9–10 (D. Nev. Mar.
19 31, 2019).

22 CONCLUSION

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24 **IT IS ORDERED** that Plaintiff Christiana Trust's Motion for Summary Judgment (ECF
25 No. 118) is granted as to the quiet title claim only. The Court quiets title and declares that SFR
26 acquired the property subject to Christiana's deed of trust.

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1 **IT IS FURTHER ORDERED** that Defendant Cornerstone Homeowners Association's
2 Motion for Summary Judgment (ECF No. 119) and Defendant Terra West Collections Group's
3 Motion for Judgment on the Pleadings (ECF No. 120) are granted consistent with the findings of
4 fact and conclusions of law in this opinion.
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6 **IT IS FURTHER ORDERED** that the notices of lis pendens in this case, (ECF Nos. 3
7 and 21) are expunged.

8 The Clerk of the Court is instructed to close the case.

9 DATED: January 30, 2020.

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13 **RICHARD F. BOULWARE, II**
14 **UNITED STATES DISTRICT JUDGE**